No. 167

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, APPELLANT

v.

JOSEPH KAHRIGER

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the District Court (R. 3-7) is not reported.

JURISDICTION

The order of the District Court dismissing the information was entered May 7, 1952 (R. 7). A notice of appeal was filed on June 5, 1952 (R. 7). On October 13, 1952, this Court noted probable jurisdiction (R. 19). The jurisdiction of this Court is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the occupational tax provisions of the Revenue Act of 1951 (26 U.S.C., Supp. V, 3290) which levy a tax on persons engaged in the business of accepting wagers, and require such persons to register with the Collector of Internal Revenue, are unconstitutional because incidental regulatory features of the registration section (26 U.S.C., Supp. V, 3291) infringe the police power reserved to the states.

STATUTES INVOLVED

Section 471(a) of the Revenue Act of 1951 (c. 521, Title IV, 65 Stat. 529), provides, *inter alia:*

* * * * *

Subchapter A—Tax on Wagers.

[26 U.S.C., Supp. V, 3285].

(a) Wagers.*

There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

* * * * *

(d) Persons liable for tax.

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who

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* "Wager" is defined in Section 3285 (b) (1). It includes wagers in lotteries conducted for profit. Lottery is defined in (b) (2) so as to exclude drawings conducted by charitable organizations and games conducted in the presence of all the wagerers.

conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) Exclusions from tax.

No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

* * * * *

Subchapter B—Occupational Tax

[26 U.S.C., Supp. V, 3290]

A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

[26 U.S.C., Supp. V, 3291]

(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

* * * * *

[26 U.S.C., Supp. V, 3294].

(a) *Failure to pay tax.* Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

* * * * *

(c) *Willful violations.* The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter.

STATEMENT

On March 17, 1952, a two-count information was filed in the United States District Court for the

Eastern District of Pennsylvania charging that defendant, being in the business of accepting wagers, as defined in 26 U.S.C., Supp. V, 3285, *supra* (1) failed to pay the occupational tax of $50 per year as required by 26 U.S.C. Supp. V, 3290, *supra*, and failed to register with the collector of his district as required by 26 U.S.C., Supp. V, 3291, *supra*, in violation of 26 U.S.C. 2707(b), and 26 U.S.C., Supp. V, 3294, *supra* (R. 2).

The defendant moved to dismiss the information on the ground that the statute on which it is based is unconstitutional in that it constitutes a penalty in the guise of a tax; that it is arbitrary and unreasonable; that it attempts to regulate an activity which is entirely within the jurisdiction of the state; that it imposes a tax which is not uniform, in that certain persons are excluded from its operation; and finally, that it compels a person to be a witness against himself (R. 3). In its opinion granting defendant's motion to dismiss, the District Court conceded "that the revenue objective of the legislation in question is clearly within the scope of the powers of Congress to express," that "it imposes a tax deemed by the Congress fair and reasonable," and that it "exempts certain types of wagering and wagerers, which to Congress seemed wise, and requires certain information, which appear to be constitutionally legitimate." The District Court held, however, that because the information called for by the registration provisions (26 U.S.C., Supp. V, 3291, *supra*) was "peculiarly applicable to the applicant from the standpoint of

law enforcement and vice control," the entire legislation falls as an infringement by the federal government on the police power reserved to the states by the Tenth Amendment to the Constitution (R. 3-7).

SUMMARY OF ARGUMENT

The taxes on the business of gambling, which Congress estimated would produce large revenues, are a proper exercise of the federal taxing power. Their validity is established by the familiar line of cases running from the *License Tax Cases*, 5 Wall. 462, to *United States* v. *Sanchez*, 340 U.S. 42. These cases also demonstrate that a federal tax is not invalid because levied on an occupation unlawful under state law. See especially *License Tax Cases, supra.*

The registration provisions are valid because they have a direct relationship to enforcement of the validly-imposed tax. It obviously facilitates collection of a tax on a business to have the person engaged in such business specify his name, address, and place of business and the names and addresses of the persons who carry on the business for him or for whom he carries on the business. The particular need for this type of information with relation to the gambling tax was made clear to Congress before the statute was enacted. See Committee Reports, cited *infra.* The fact that such registration provisions may incidentally aid state law enforcement no more invalidates such provisions than the incidental effect of a tax in discouraging a business activity invalidates the tax. See *McCray*

v. *United States*, 195 U.S. 27. Many tax statutes contain registration and informational provisions similar to those found in the tax on wagering. Taxing statutes often require the disclosure of places of business and of information as to the identity not only of the taxpayers themselves but of other persons with whom they deal. When such statutes have been challenged, they have uniformly been upheld. In such cases the validity of the provisions for the disclosure of information has either been assumed or declared to be obvious. *E.g.*, *Sonzinsky* v. *United States*, 300 U.S. 506.

This has been true with respect to the analogous provisions in the taxing acts relating to narcotics, marihuana and firearms even though such provisions, like those involved here, also incidentally supplement local policing of activities unlawful under state law. See *United States* v. *Doremus*, 249 U.S. 86; *Nigro* v. *United States*, 276 U.S. 332; *United States* v. *Sanchez*, 340 U.S. 42; *Sonzinsky* v. *United States*, 300 U.S. 506. The only authority cited by name by the court below, *United States* v. *Constantine*, 296 U.S. 287, did not involve such incidental regulatory provisions, but held invalid an excise tax imposition of which was conditioned on violation of state law.

ARGUMENT

The Occupational Tax on the Business of Accepting Wagers and the Registration Provisions Thereunder Are Constitutional

The statute here involved imposes an excise tax of 10 per cent on certain types of wagers, the tax

being payable by the persons accepting such wagers (26 U.S.C., Supp. V, 3285), and an annual occupational tax of $50 payable by those liable for the excise tax and also by persons receiving wagers on behalf of any person so liable (26 U.S.C., Supp. V, 3290). The registration provisions of the act, which according to the court below made it a police measure, provide (26 U.S.C., Supp. V, 3291):

> (a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—
>
> (1) his name and place of residence;
>
> (2) if he is liable for tax under subchapter A[i.e., the 10 per cent excise tax on wagers], each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and
>
> (3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

The question here presented is whether the occupational tax of $50 and the requirement that taxpayers register their names, addresses and places of business, and the names and addresses of those who act on their behalf or on whose behalf they act are constitutional.

Six district courts have sustained the validity of the statute. *United States* v. *Smith*, No. 22206 (S.D. Cal.), July 3, 1952 (not reported); *United*

States v. *Arnold, Jordan, and Wingate,* No. 478 (E.D. Va.) September 18, 1952 (not reported); *United States* v. *Forrester,* No. 19290 (N.D. Ga.), February 29, 1952 (not reported); *United States* v. *James W. Penn,* No. 2021 (M.D. N.C.), May 1952 (not reported); *Combs* v. *Snyder,* 101 F. Supp. 531 (D.D.C.), affirmed, 342 U.S. 939.[1] The court below alone has held to the contrary.

A. The Occupational Tax Is A Legitimate Exercise of the Taxing Power

The validity of the occupational tax on the business of wagering is conclusively established by the familiar line of cases sustaining the power of Congress to impose taxes on dealers in narcotics (*United States* v. *Doremus,* 249 U.S. 86; *Nigro* v. *United States,* 276 U.S. 332), marihuana (*United States* v. *Sanchez,* 340 U.S. 42), firearms (*Sonzinsky* v. *United States,* 300 U.S. 506), and lotteries (*License Tax Cases,* 5 Wall. 462). These cases and others (*Veazie Bank* v. *Fenno,* 8 Wall. 533 (tax on state bank notes); *McCray* v. *United States,* 195 U.S. 27 (tax on oleomargarine)) make it plain that a congressional motive to suppress the activity taxed does not vitiate an otherwise proper exercising of the taxing power of Congress.

The principal difference between the taxes in the cases cited and the taxes imposed on gambling is that Congress believed that the latter would pro-

[1] Copies of the unreported decisions are filed with the Clerk. The *Combs* decision was based primarily on the doctrine of unclean hands, and the Government's motion to affirm was based on that principle.

duce large revenues.[2] Both House and Senate Committee Reports estimated that the revenues to be derived from the two gambling taxes together would be $400,000,000. H. Rep. No. 586, 82d Cong., 1st Sess., p. 54; S. Rep. No. 781, 82d Cong., 1st Sess., p. 112.[3] Both Committee Reports stated (H. Rep., p. 55, S. Rep., p. 113):

> Commercialized gambling holds the unique position of being a multi-billion-dollar, Nation-wide business that has remained comparatively free from taxation by either State or Federal Governments. This relative immunity from taxation has persisted in spite of the fact that wagering has many characteristics which make it particularly suitable as a subject for taxation. Your committee is convinced that the continuance of this immunity is inconsistent with the present need for increased revenue, especially at a time when many consumer items of a seminecessity nature are being called upon to bear new or additional tax burdens.

The purpose of the occupational tax was both to collect revenue on its own account and also to facilitate collection of the 10 per cent tax. The Re-

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[2] This in itself is sufficient to distinguish the cases in which this Court has invalidated an alleged tax on the grounds that it was not a true revenue measure but a penalty seeking to regulate matters not legitimately subject to federal control. *Cf. Child Labor Tax Case*, 259 U.S. 20; *Hill* v. *Wallace*, 259 U.S. 44; *United States* v. *Butler*, 297 U.S. 1; *Carter* v. *Carter Coal Co.*, 298 U.S. 238.

[3] "The additional revenue it is estimated will be derived from the taxes on gambling in a full year of operation is distributed among the various excises as follows:

ports stated (H. Rep. No. 586, p. 60; S. Rep. No. 781, p. 118):

> The committee conceives of the occupational tax as an integral part of any plan for the taxation of wagers and as essential to the collection and enforcement of such a tax.

The cases cited above demonstrate that a federal tax is not invalid because it may be levied on an occupation unlawful under state law. This was first established in the *License Tax Cases*, 5 Wall. 462 (1866). The federal statute required "lottery-ticket dealers" and retail liquor dealers, among others, to pay license taxes which are substantially indistinguishable from the occupational tax here involved. 13 Stat. 252; 14 Stat. 116-117. The defendants in the cases before this Court resided in states in which "selling lottery tickets" and "retailing liquors" were forbidden by state law. 5 Wall. at 463. This was the entire basis for the objection to the federal tax. The Court rejected the argument that the federal statute gave author-

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	[In millions]
Occupational tax on coin-operated gaming devices	$7
Tax on wagers Occupational tax on the business of accepting wagers	400
Total	407

With respect to the estimate of $400 million from the two wagering taxes, since this is a field of taxation with which the Federal Government has had no previous experience and because there is uncertainty as to the actual amount of the tax base, the committee recognizes that it is difficult to estimate too closely the actual revenue which these new taxes will yield."

ity to violate state law, and held (5 Wall. at 474-475):

> That the provisions of the acts of Congress requiring such licenses, and imposing penalties for not taking out and paying for them, are not contrary to the Constitution or to public policy.

The opinion elaborated on this point (5 Wall. at 473):

> There is nothing hostile or contradictory, therefore, in the acts of Congress to the legislation of the States. What the latter prohibits, the former, if the business is found existing notwithstanding the prohibition, discourages by taxation. The two lines of legislation proceed in the same direction, and tend to the same result. It would be a judicial anomaly, as singular as indefensible, if we should hold a violation of the laws of the State to be a justification for the violation of the laws of the Union.

Since the *License Tax Cases*, there has been no doubt that federal taxes may be imposed on occupations forbidden by state law. That the income tax applies to such occupations is, of course, well known. *Rutkin* v. *United States*, 343 U.S. 130, 137, 140 (dissent). And unquestionably many of the acts taxed by the federal narcotics, liquor and firearms laws are unlawful in some of the states.[4]

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[4] *E.g.*, Uniform Narcotic Drug Act, §§ 1 and 2, 9A U.L.A.; Miss. Code (1942) § 2631 (prohibiting manufacture of intoxicating liquor); Oklahoma Statutes (Permanent Ed., 1937) Title 37, § 1 (same); Ill. Stat. (1936) 37.364 (sale of machine guns to general public forbidden); New York Penal Law (McKinney, 1952) § 1896 (same).

Nothing in the reasoning of the District Court suggests that the occupational tax as such is invalid—although the court somewhat inexplicably dismissed the count of the indictment based on a mere failure to pay the tax. The decision below was based on the theory that Congress was without the right "to also require that certain information be furnished which is peculiarly applicable to the applicant from the standpoint of law enforcement and vice control.", (R. 5.) Particularly objectionable to the Court was the requirement that registrants give names and addresses of other persons with whom they are associated in gambling enterprises. We therefore will now turn to the validity of the registration provisions of the statute.

B. The Registration Provisions of the Statute Are Lawful and Constitutional Means of Facilitating the Collection of the Revenue

That the taxing power permits Congress to implement statutes levying taxes with regulations necessary to the collection of the taxes needs no citation of authority. The *Doremus, Nigro, Sonzinsky,* and *Sanchez* cases discussed at greater length (*infra*; pp. 21-24) make it perfectly plain that to require a taxpayer to submit to the taxing authorities such basic information as is sought in the statute here involved is an appropriate means of exercising the taxing power.

The incidental effect of such registration provisions on state law enforcement no more invalidates such provisions than the incidental effect of the tax itself invalidates the tax. There is

obviously no clash between federal and state authority when the federal law does not make it harder for the states to enforce the law; appellee's objection is that the federal statute makes it *too easy* for the states. This Court has many times in the cases cited upheld the validity of incidental regulatory provisions designed to enforce a valid tax, even though such measures also tended to regulate matters primarily within the domain of local law enforcement. Like the present tax on wagering, they sought through systems of excise and special taxes, compulsory registration and other enforcement devices to supplement local regulation of activities of an antisocial and essentially intrastate character.

1. *The registration provisions are necessary to the collection of the wagering taxes*

As we have noted, the Committee Reports state that the occupational tax is an "integral part" of the plan for collecting the 10 per cent tax on wagers. The registration provisions are directly related to the enforcement and collection of both taxes. The taxes affect a large and complex business operated by a class of citizens from whom willing compliance and cooperation are not to be expected. It unquestionably facilitates the collection of a tax on a business to have the person engaged in such business specify his name, address and place of business and the names and addresses of the persons either who carry on the business for him or for whom he carries on the business. In-

deed it seems obvious that the taxes could not be collected in the absence of such elementary information.

The particular need for this type of information with relation to the tax on the business of gambling is made clear by the legislative history of the statute here involved. The Kefauver Committee,[5] whose investigations inspired the instant legislation, found that twenty billion dollars changes hands every year in the United States as a result of organized gambling (S. Rep. 141, 82d Cong., 1st Sess., p. 13), that gambling is a business that operates through a vast interstate network of syndicates (S. Rep. 141, p. 14, S. Rep. 307, pp. 2-3, 82d Cong., 1st Sess.), and that gamblers customarily fail to keep adequate books and records and so organize their businesses that it is extremely difficult for the Government to determine their individual incomes (S. Rep. 141, pp. 31-33). With respect to the latter problem, the Assistant Commissioner of Internal Revenue testified before the Committee (S. Rep. 141, *supra*, p. 31) that:

> unlike the gansters of the thirties, many of our modern big-time racketeers take deliberate and carefully contrived steps to defend themselves against the possibility of successful tax prosecutions. * * * *They frequently attempt to insulate themselves from direct*

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[5] The Reports of the Kefauver Committee, officially designated as the Special Committee to Investigate Organized Crime in Interstate Commerce, appear in Senate Reports Nos. 141, 307, 725, and 2370 of the 82d Congress.

attack by operating through a maze of corporations, dummy stockholders, and "fronts". Under these conditions, investigation on the part of the Bureau aimed at determining whether the returns or supporting records of these individuals are false or fraudulent so as to sustain a charge of criminal tax evasion, is frequently a long, difficult, and time-consuming process. [Italics supplied.]

The registration provisions, which were drafted in the light of this and other similar testimony, sought to minimize evasion of this kind. Both Committee Reports on the bill which later became the present Act, explained the reason for the registration features of the bill as follows (H. Rep. 586, 82d Cong., 1st Sess., p. 60; S. Rep. 781, 82d Cong., 1st Sess., p. 118):

> The committee conceives of the occupational tax as an integral part of any plan for the taxation of wagers and as essential to the collection and enforcement of such a tax. Enforcement of a tax on wagers frequently will necessitate the tracing of transactions through complex business relationships, thus requiring the identification of the various steps involved. For this reason, the bill provides that a person who pays the occupational tax must, as part of his registration, identify those persons who are engaged in receiving wagers for or on his behalf, and, in addition, identify the persons on whose behalf he is engaged in receiving wagers.

It is for Congress to determine the reasonableness of the means employed to effectuate a legitimate exercise of the taxing power. Certainly the registration provisions of the statute here involved are reasonably adapted to the collection of the taxes on wagering.

2. *Registration provisions similar to those imposed by the wagering tax statute are found in many taxes and their validity has never been doubted.*

There is nothing unusual about the registration provisions contained in the tax on wagering. The Committee Reports demonstrate that these provisions were modeled on similar requirements in other tax laws, many of which have been upheld by this Court. The Reports stated (H. Rep. 586, p. 60; S. Rep. 781, p. 118):

> In general, the provisions of the occupational tax follow the pattern of the other occupational taxes imposed under the code and require registration, posting of special tax stamp by the taxpayers, the maintenance by the collector of a list of taxpayers for public inspection, etc.

The registration provisions of the wagering tax require the filing of only names, addresses and places of business. Presumably every tax return requires the taxpayer to state his name and address for purpose of identification. When the tax is imposed upon a business or occupation, the place or

places of business must also be set forth. Thus, the taxes on tobacco manufacturers, dealers and peddlers (26 U.S.C. 2011, 2012, 2031, 2032, 2051, 2052, 2071, 2072) require registration of the "name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on." *E.g.*, Section 2011. A leaf tobacco manufacturer must set forth "where his business is to be carried on, and the exact location of each place where leaf tobacco is held by him on storage." Section 2052. Section 2810 requires the possessor of distilling apparatus to register "the particular place where such still or distilling apparatus is set up * * *, the owner thereof, his place of residence * * *."

The special taxes imposed on oleomargarine,[6] renovated butter, filled cheese, narcotics, marihuana, liquor, firearms, and coin-operated amusement or gaming devices (26 U.S.C. 3200-3268) are supplemented by the general provision that (26 U.S.C. 3270):

> Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his *name* or style, *place of residence*, trade or business, and *the place where such trade or business is to be carried on*. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered. [Italics supplied.]

[6] Repealed by 64 Stat. 20 (1950).

Persons subject to the gasoline tax are required to register their "principal place of business". Section 3412(d).

A number of tax statutes contain provisions requiring the taxpayer to submit information as to other persons, not dissimilar to the requirement contained in Section 3291 of the gambling tax law that the taxpayer report the names and addresses of his agents or principal. Thus, the tax on manufacturers of tobacco requires that, in addition to registering his own name, address and place of business the taxpayer shall furnish (26 U.S.C. 2012):

> when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered.

See also 26 U.S.C. 2032; 2072 ("if he sells for other parties, the person for whom he sells").

Section 2810, as we have noted, requires the possessor of a still to register the name and address of the owner. Section 2811 provides that every person who disposes "of any substance of the character used in the manufacture of distilled spirits shall, when required by the Commissioner, render a correct return. * * * showing the names and addresses of the persons to whom such disposition was made, with such details, as to the quantity so

disposed of or other information which the Commissioner may require as to each such disposition, as will enable the Commissioner to determine whether all taxes due with respect to any distilled spirits manufactured from such substances have been paid." Section 2812 requires every person engaged in the business of a distiller or rectifier to give the Collector notice not only of his name, address and the place of business, but also of "the name and residence of every person interested or to be interested in the business." See also the similar requirement for brewers contained in 26 U.S.C. 3155.

Many sections of the Internal Revenue Code require corporations to file the names and addresses of shareholders, *e.g.*, 26 U.S.C. 148 (a), (c), (e) and (f). Marihuana dealers are required to make returns indicating the names of persons from whom marihuana was received 26 U.S.C. 3233(a), while dealers in firearms are required to remit to the Commissioner of Internal Revenue a copy of the order form identifying the weapon sold and naming and identifying the purchaser. 26 U.S.C. 2723(a) and (b). Brokers must return the names of customers and details as to their transactions. 26 U.S.C. 149. Partnerships must return the names, addresses, and shares of each partner. 26 U.S.C. 187. Persons paying others $600 or more must report the names and addresses of the recipients. 26 U.S.C., Supp. V, 147.

We have noted that the taxes most akin to the taxes on wagers all have similar registration pro-

visions. The validity of these has uniformly been assumed or upheld.

The statute involved in the *License Tax Cases*, 5 Wall. 462, *supra*, p. 11, required that every person carrying on a business for which a license was required shall register

> first, his or their name or style, and in case of a firm or company, the names of the several persons constituting such firm or company, and their places of residence; second, the trade, business, or profession for which a license is desired; third, the place where such trade, business, or profession is to be carried on; * * * [13 Stat. 248-249.]

In upholding the tax on lottery ticket dealers, the Court did not find it necessary to mention this provision—obviously because it did not occur to anyone that such a requirement would be unconstitutional.

The *Doremus case* (249 U.S. 86) upheld the constitutionality of the Harrison Narcotic Act, Section 1 of which required producers or distributors of opium and other drugs "to register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on". 249 U.S. at 90. Section 2 made it unlawful to transfer the specified narcotic except pursuant to written order forms provided by the Commissioner of Internal Revenue, and made available only to registered dealers (38 Stat. 787). The purpose of the order form pro-

vision clearly was to put a premium on registering as required by section 1, and thereby provide more effective control of the narcotics traffic. The validity of Section 1, which is the equivalent of the provision involved in this case,[7] was not even challenged. The discussion related to Section 2, which contains a much more unusual form of regulation than the mere reporting of the names, addresses and places of business of those engaged in the taxed occupation. The provisions of Section 2 were sustained because

> Considered of themselves, we think they tend to keep the traffic aboveboard and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the federal law. * * * [249 U.S. at 94.]

The Court could not say that these provisions of Section 2 "can have nothing to do with facilitating the collection of the revenue * * *." 249 U.S. at 95.

The *Doremus* decision was reaffirmed nine years later in *Nigro* v. *United States*, 276 U.S. 332, on the ground that the order form provisions are "genuinely calculated to sustain the revenue features" (276 U.S. at 354), even though the effect was to discourage the use of the drugs. Again, although

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[7] The statute was subsequently amended to require only lawfully-entitled dealers to pay the special tax and register. (49 Stat. 1745, 26 U.S.C. 3220.)

Section 1 was discussed in the opinion, its validity, apart from its relation to Section 2, was assumed to be plain. As we have noted, Section 3291 is the equivalent of Section 1; it does not present the problem which caused the Court to divide so sharply as to Section 2. Other provisions of Section 1 had previously been upheld by a unanimous Court, without the need for substantial discussion, in *Alston* v. *United States,* 274 U.S. 289, 294.

The Court finally saw fit to mention a provision for registration in *Sonzinsky* v. *United States,* 300 U.S. 506. Section 2 of the National Firearms Act of 1934 (48 Stat. 1236, 1237), required that

> * * * every importer, manufacturer, and dealer in firearms shall *register* with the collector of internal revenue for each district in which such business is to be carried on *his name or style, principal place of business, and places of business* in such district, and pay a special tax at the following rates * * *. [Italics supplied.]

The Court disposed of the attack on the registration provision in a single sentence (300 U. S. at 513): "Here Section 2 contains no regulation other than the mere registration provisions, which are obviously supportable as in aid of a revenue purpose."

What was "obviously supportable as in aid of a revenue purpose" in the *Sonzinsky* case is equally obvious in this case.

The Marihuana Tax Act upheld in *United States* v. *Sanchez,* 340 U. S. 42, also contained a provision

for registration similar to that here involved. 26 U.S.C. 3231 (a) provides that:

> Any person subject to the tax imposed by section 3230 shall, upon payment of such tax, register his name or style and his place or places of business with the collector of the district in which such place or places of business are located.

The *Sanchez* case involved a suit for taxes due under §2590(a)(2), which imposes a tax of $100 per ounce on transfers of marihuana to unregistered dealers.[8] The Court, while recognizing that the heavier tax on transfers to unregistered persons implemented "the congressional purpose of restricting traffic in marihuana to accepted industrial and medicinal channels," upheld the Government's claim. Since the particular heavy tax involved was predicated on non-registration as required by §3231(a), the *Sanchez* case is at least an implicit holding that Congress may require registration of persons subject to taxes of this kind.

United States v. *Constantine,* 296 U.S. 287, the sole authority relied upon below, is entirely inapposite. It involved a special excise tax of $1,000 on dealing in liquor, applicable only where the business was conducted in violation of state law. The so-called tax being large in amount and conditioned on commission of a crime, this Court rightly held it to be "a penalty for the violation of state law,

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[8] The statute makes the tax payable by the purchaser, unless the transfer is made without an order form, in which event, as in *Sanchez,* the transferor is liable.

and as such beyond the limits of federal power." However, the instant tax on wagers and the registration provisions attendant thereon, apply irrespective of the legality of gambling under state law. With respect to such a tax this Court observed in the *Constantine* case itself (296 U. S. at 293):

> If it [the tax there involved] was laid to raise revenue its validity is beyond question, notwithstanding the fact that the conduct of the business taxed was in violation of law. The United States has the power to levy exeises upon occupations, and to classify them for this purpose; and need look only to the fact of the exercise of the occupation or calling taxed, regardless of whether such exercise is permitted or prohibited by the laws of the United States or by those of a State. The burden of the tax may be imposed alike on the just and the unjust. It would be strange if one carrying on a business the subject of an excise should be able to excuse himself from payment by the plea that in carrying on the business he was violating the law. The rule has always been otherwise.

It is thus clear that the Court in the *Constantine* case would have upheld the kind of tax with which the instant case is concerned.

The gambling tax is a valid exercise of the federal taxing power and its registration provisions are directly and intimately related to the collection of the tax. The fact that the statute may also tend

to suppress unlawful activity does not invalidate it. See *License Tax Cases*, 5 Wall. 462; *McCray* v. *United States*, 195 U.S. 27.

CONCLUSION

It is therefore respectfully submitted that the judgment of the District Court should be reversed.

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